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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/913,320	10/09/2001	Ernst Freydl	5055	8497

7590

09/29/2004

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EXAMINER

MANOHARAN, VIRGINIA

ART UNIT	PAPER NUMBER
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1764

DATE MAILED: 09/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Office Action Summary</p>	Application No. <u>320</u> 09/913,230	Applicant(s) IRVING ET AL.	
	Examiner Virginia Manoharan	Art Unit 1764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05-06-04.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13, 14, 19-23, 25 and 26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13, 14, 19-23, 25 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED OFFICE ACTION

Claims 13-14, 19-23 and 25 are objected to because of the following informalities:

- a. The inconsistent used of terminology in the claim is improper.
For example: the " at least one connection plate" in claim 13, as opposed to "the connection plate " in claims 19-20, 22.
- b. In claim 13, second line from the bottom; and in claim 25, line 2, "the exit opening" and "the base" should be – an exit opening-and –a base- respectively.
- c. In claim 20, further should be inserted between "means" and "comprise" since the connection means was initially recited as comprising of at least one connection plate.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "...baffles formed between the exit opening and the recess..." recited in the last two lines of claim 13, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not

be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

When preparing new drawings in compliance with the requirement, care must be exercised to avoid introduction of anything which could be construed to be new matter prohibited by 35 U.S.C. 132 and 37 CFR 1.121.

Claim 13-14, 19-23 and 25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The following features such as a "...baffles formed between the exit opening of the longitudinal channels and the recess so as to prevent reflux of condensate into the sample vessels..." in claim 13, (note also claim 24), are nowhere in the specification.

However, if support can be pointed out, at least the specification is objected to as failing

Art Unit: 1764

to provide proper antecedent basis for the claimed subject matter as the above limitations are not positively recited in the specification.. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP -0400965 or Bowser (4,003,713) in view of Rising et al (5,221,311).

The EP '965 discloses a device for evaporating samples in sample containers (1) provided with at least one filling opening, the device is comprised of supporting means (2), corresponding to the claimed holding means for holding the sample containers; connection means (3) connectable to the filling opening; and means for producing a vacuum. Bowser discloses in the abstract, basically similar features of the apparatus as above. The apparatus of EP 965 or Bowser differs from the claimed invention in that claim 26 recites in the "wherein" clause that "...the connection means connected to the filling openings are connected directly via tubing to the means for producing a vacuum...". However, Rising et al shows in Fig. 6 that the above connection is conventionally done in the art. .

To incorporate Rising et al apparatus to the apparatus of EP '965 or Bowser would have been obvious to one of ordinary skill in the art for the advantage taught e.g., by Rising at col. 4, lines 53-56. That is, "... the entire

procedure of sample extraction and sample loading take a minute without permitting contact to outside contaminants where current technology can take hours of a skilled technician's time..."

Claims 13-14, 19-23 & 25 would be allowable if rewritten or amended to overcome the above objections/rejection(s).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Lautenschlager discloses an apparatus including a container for receiving the sample that is connected to a section device by means of one section pipe.
- b. Feygin discloses evacuating a vessel through a u-valve.
- c. Castaneda discloses a device for sampling a liquid to be diluted.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will

Art Unit: 1764


the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Virginia Manoharan whose telephone number is 571-271-1450. The examiner can normally be reached on Tuesday-Friday from 7:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on (571) 272-1444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free)

V. Manoharan/af
September 23, 2004


VIRGINIA MANOHARAN
PRIMARY EXAMINER
ART UNIT 125/1764